HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.10838 OF 1995

Between:
M/s. AVU Engineers Pvt. Ltd.,
A-15, APIE, Balanagar,
Hyderabad. Represented by its
Managing Director Mr.K.C.Rana

..... Petitioner

AND

The Hon'ble Addl.Industrial Tribunal-cum-
Additional Labour Court,
1st floor, Chandravihar,
M.J.Road, Hyderabad represented by its
Chairman/Presiding Officer and two others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Sri P.Nageswara Sree

Counsel for respondent No.2 : none

Dated 12/9/2006

This petition is directed against award dated 25.10.1994 passed by Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D.No.24 of 1993 whereby it ordained reinstatement of respondent No.2 M.P.Roychen with continuity of service and 50% back wages.

Brief Facts

Respondent No.2 joined the services of the petitioner company - AVU Engineers Private Limited on 27.2.1987 as Welder on a monthly salary of Rs.405/-. On 21.9.1992, he is said to have applied for ESI leave, which was to end on 7.10.1992. He is said to have reported for duty on 8.10.1992 but was not allowed to perform duty. He served legal notice dated 6.11.1992 on the management of the company for reinstatement and then filed an application under Section 2 a (ii) of the Industrial Disputes Act, 1947 (for short 'the Act') as amended by Central Act No.14 of 1947. He alleged that the failure of the management of the company to allow him to resume duty amounts to termination of his services and the same is liable to be nullified.

In the counter filed on behalf of the management of the company, it was pleaded that there was no discharge, dismissal, retrenchment or termination of the services of respondent No.2 and therefore, application filed under Section 2 a (ii) of the Act is not maintainable. It was further pleaded that respondent No.2 failed to report for duty on 1.10.1992 i.e. the date on which his leave expired and even though he was served with notice dated 4.11.1992, requiring him to report for duty, he failed to resume duty and sent legal notice.

The learned Presiding Officer of the Tribunal accepted the version of the management of the company that the workman had volunteered to abstain from duty and that he had fabricated the story of not being allowed to resume duty. Notwithstanding this, the learned Presiding Officer passed an order for

reinstatement of respondent No.2.

I have heard learned counsel for the petitioner and perused the record. In an application filed under Section 2 a(ii) of the Act, which implies acceptance of a dispute between the employer and employee in the matter of termination of services simplicitor or by way of dismissal or discharge or retrenchment or a dispute relating to conditions of service, the Industrial Tribunal/Labour Court can record a finding only after coming to the conclusion that there did exist a dispute between the parties. In other words, the Industrial Tribunal/Labour Court does not get the jurisdiction to adjudicate an application made under Section 2 a(ii) of the Act, unless it comes to the conclusion that there exists some dispute between the parties. The facts of the present case clearly show that there did not exist any dispute between the employer i.e. the company and workman -respondent No.2 in the matter of termination of his services. In the counter filed by the management of the company, it was specifically pleaded that the services of the workman had not been terminated and he can report for duty at any time. The learned Presiding Officer of Additional Industrial Tribunal accepted the version of the employer and yet he ordered reinstatement of the workman with 50% back wages and continuity of service. In my view, in the absence of a finding to the effect that the employer had wrongfully terminated the services of the workman, an award of reinstatement with continuity of service with or without back wages could not have been passed.

In the result, the writ petition is allowed whereby the award in ID No.24 of 1993 dated 25.10.1994 is quashed.

G.S.SINGHVI, CJ

Dt.12.9.2006

msv.